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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

DONALD NEMIR,

Plaintiff and Appellant,

v.

BANK OF AMERICA, N.A., et al.,

Defendants and Respondents.

A095834

(Marin County  
Super. Ct. No. 011446)

Respondent Bank of America, N.A. moves to dismiss the appeal of Donald Nemir as moot. Appellant appeals the denial of a preliminary injunction enjoining respondent from selling his property. Because the property has been sold, we agree the appeal is moot and dismiss.

***Factual and Procedural History***

Appellant was the owner of a residence in Mill Valley. Respondent extended a home equity line of credit to appellant secured by a deed of trust on his residence. On January 10, 2001, respondent issued a notice of default and election to sell the property. Appellant filed an amended complaint in Marin County Superior Court asserting the notice of default was defective and that respondent had failed to provide him with an itemized statement of the amounts owing.<sup>1</sup> In response to appellant's request, the court issued a temporary restraining order enjoining respondent from selling the property.

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<sup>1</sup> Respondent claims it inadvertently failed to send appellant this information, but provided it after appellant filed his complaint. Appellant acknowledged receipt.

Following a hearing on May 10, 2001, the court dissolved the temporary restraining order and denied appellant's motion for a preliminary injunction. Appellant filed a second amended complaint June 18, 2001, adding a cause of action for accounting. On July 27, 2001, he appealed the court's denial of his preliminary injunction application.

On October 8, 2001, respondent issued a notice of foreclosure sale of the property. On October 22, 2001, appellant applied for another temporary restraining order to enjoin respondent from proceeding with the sale. The application was denied on November 1, and later that day appellant petitioned this Court for a writ of supersedeas or temporary stay of the scheduled sale. The petition was denied and appellant's property was sold on November 5, 2001.

### ***Discussion***

Respondent contends the appeal is moot and should be dismissed because the property has been sold. Respondent argues that reversal of the court's order cannot afford appellant relief. We agree.

An appeal from an order denying an injunction may be dismissed as moot if the act sought to be enjoined is performed while the appeal is pending. (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10-11; *County of Los Angeles v. Butcher* (1957) 155 Cal.App.2d 744, 746 ["[w]hether an injunction restraining the sale of real property should be granted becomes a moot question on appeal where in the meantime the property has been sold."].) An exception to this rule exists where the question to be decided on appeal is of continuing public importance, capable of repetition, yet evading review. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) Such an exception does not apply here.

***Disposition***

The appeal is dismissed. The parties are to bear their own costs on appeal.

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Corrigan, J.

We concur:

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McGuinness, P.J.

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Parrilli, J.